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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 55.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, TRUSTEE OF CLARA D. BELL, PLAINTIFF IN ERROR,

vs.

THE CITY OF LEXINGTON, KENTUCKY, AND E. T. GROSS, DELINQUENT TAX COLLECTOR FOR SAID CITY, DEFENDANTS IN ERROR.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

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(19,812.)

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SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

On pages 5-8 of the original brief for plaintiff in error are printed the statutory provisions, being sections 3179-3182, inclusive, Kentucky Statutes, relating to assessment of property in cities of the second class. The provision as to back or retrospective assessments is the concluding sentence of section 3179, on page 6 of the brief.

On pages 22-23 of said brief, in referring to the above provision, this language was used:

> "We have not thought it incumbent on us to determine the question which may be made on this statute, whether the provision just quoted was intended to stand alone as to the assessment of omitted

> property, or whether it was intended that the action of the assessor should go through the same forms and be subjected to the same processes to ascertain its justness and correctness, including the board of review and their provisions, to secure a proper result, as is provided in the case of original sections. If we should pass an opinion on that point we should be disposed to say that the statute intends that the act of the assessor in assessing property omitted from former years should be subjected to the same scrutiny and should go through the same forms as is provided in the case of original assessments. The act seems to be capable of this construction, and this construction alone can make it comply with the law."

In the preparation for the oral argument of this cause after our briefs had been printed, we became satisfied that this expression of opinion was incorrect, and that it was not possible to construe the back-assessment provision as requiring the same forms of notice and opportunity to be heard as is provided in cases of original assessments. Upon the argument, therefore, we directly raised the question of the constitutionality of the back-assessment provision upon the distinct ground that it did not contemplate a compliance with the requirements for notice and opportunity of being heard provided in cases of original assessments.

A careful comparison of the back-assessment clause with the rest of the statute will, we submit, make this evident. That portion is in these words:

> "Whenever the assessor shall ascertain that there has in any former year or years been any property omitted which should have been taxed, he shall assess the same against the person who should have been assessed with it, if living; if not, against his representative.

It will be seen that this back assessment may, therefore, be made by the assessor "whenever" he discovers the fact of omission, whether during the period when he is making his

regular assessment for the current year or afterwards, say in March, April, May, June, and so on. There is no limitation as to the time when he may perform this act. The provisions in the cases of original assessment as to notice to the taxpayer and opportunity to be heard before the assessor are all limited in point of time to the period commencing September 1 and ending December 1, at which time the assessment books pass out of the control of the assessor and are delivered to the auditor. The provisions of section 3181, relating to the board of equalization, show that that board meets only in the month of January, and that its existence is limited to a prescribed time, and the whole language of the section indicates most clearly that the functions of that board, as therein prescribed, relate entirely to assessment books which were completed by the assessor on the first of the preceding December and turned over to the equalization board in the month of January. That it was not contemplated that this board of equalization should have revisory power over the retrospective assessments for former years made by the assessor is made further evident by the fact that no power exists to reconvene that board for any purpose whatever beyond the first meeting of the general council in March. It then becomes wholly *functus officio* and incapable in point of fact of acting upon any retrospective assessment made by the assessor after that time, even if it had been contemplated that it should ever have such power.

Section 3188, Kentucky Statutes, in referring to the power of the delinquent tax collector in whose hands the tax bill in this proceeding was placed, provides as follows:

> "He shall have power to sue out in any justice's court in the county an attachment on said tax bills, and the proceedings shall be the same as attachment proceedings for the collection of State taxes."

Section 4189, Kentucky Statutes, relating to attachment proceedings for the collection of State taxes, provides as follows:

> "That the delinquent shall have the right to defend by showing, first, that the property has never been assessed, but it shall not be sufficient to show a defective assessment merely; second, that the property is not subject to taxation; third, that the taxes have been paid."

The entire section in full is as follows:

> "The court may hear evidence, and, in its judgment, shall provide for the payment of the State revenue, the county levy due; and, if there be other taxes due, the court shall direct the payment thereof, provided the delinquent shall have the right to defend by showing, first, that the property has never been assessed, but it shall not be sufficient to show a defective assessment merely; second, that the property is not subject to taxation; third; that the taxes have been paid."

In this proceeding, however, the delinquent tax collector did not resort to the method of collection by attachment above referred to, but to a direct levy upon the real estate of the defendant under the provisions of section 254 of the Revised Ordinance of the City of Lexington, Kentucky, printed on page 29 of the record, under which method there is no way provided for the taxpayer to contest the validity of the tax proceedings upon any ground whatever.

The trustee plaintiff in error was, therefore, in this instance compelled to resort to injunction proceedings in a court of equity, in which, as has been fully shown in the briefs and upon the oral argument, the court had the right to investigate the validity of the assessment in all respects *except as to the question of value.*

It follows, therefore, from the foregoing, that, so far as the question of the value of the property included in this

back assessment is concerned, there was absolutely no method provided, either by statute, law, or recognized in the jurisprudence of Kentucky, by which that matter could be revised; and that if the trustee did not in fact have an opportunity of being heard before the assessor himself in the process of making this retrospective assessment, he was denied the right to be heard upon one of the most material matters entering into the assessment, which is a denial of due process of law.

Respectfully submitted,

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THE SECURITY TRUST & SAFETY VAULT COMPANY OF LEXINGTON, KY., Trustee of Clara D. Bell, - - - Plaintiff in Error

Vs.

THE CITY OF LEXINGTON, and E. T. GROSS, Delinquent Tax Collector of said City. - Defendants in Error

Brief for Defendants in Error.

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Supreme Court of the United States.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, TRUSTEE OF CLARA D. BELL,.....*Plaintiff in Error.*

vs.

THE CITY OF LEXINGTON AND E. T. GROSS, DELINQUENT TAX COLLECTOR OF SAID CITY,.....*Defendants in Error.*

BRIEF FOR DEFENDANTS IN ERROR.

Plaintiff in error, The Security Trust and Safety Vault Company, of Lexington, Kentucky, as Trustee of Clara D. Bell, was the owner and in possession of a large and profitable estate, exclusive of real property, upon the dates when assessments for taxation for the years 1894 to 1898 inclusive were required to be made for the use and benefit of the City of Lexington. The value of the personal estate held by it as such Trustee, is as follows:

For the year 1894.....$510,662.90
For the year 1895..... 511,905.50

For the year 1896..... 527,634.65
For the year 1897..... 539,624.98
For the year 1898..... 498,181.54

It appears that the plaintiff in error for the years 1894, 1895 and 1896, omitted altogether to report for assessment any tangible personal property held and possessed by it during these years; but in 1897, the tangible property was assessed as omitted and taxes paid thereon. The entire assessment for taxation of intangible personalty made by the plaintiff in error for the years in question, are as follows:

For 1894, valuation under equalization law.	$294,000.00
For 1895, amount of bonds.....	300,000.00
Notes secured by mortgage.....	2,700.00
For 1896, amount of bonds, notes, mortgages and other securities....	300,000.00
For 1897, amount of bonds, notes, mortgages and other securities....	303,000.00
For 1898, amount of bonds, notes, mortgages and other securities....	280,000.00

(Pages 34, 35 and 36 of the record.)

Adding to the above amounts of intangible property, the values of the tangible property for said years, which were comparatively small, and deducting the results from the total value of personal property held by the plaintiff in error for said years, we find the difference, which represents the amount of personal estate held by it which was neither assessed nor taxed for said years, to be as follows:

In 1894	$210,562.90
In 1895	202,605.00
In 1896	222,034.65
In 1897	229,024.98
In 1898	214,581.54
Aggregate amount	$1,078,806.00

This result was disclosed in 1898 by examination of the inventory, receipts and settlements filed by the plaintiff in error in the County and Circuit Courts of Fayette County, (pages 42 to 67 inclusive of the record.)

In the latter part of 1898 the City of Lexington notified the plaintiff in error that it had omitted from assessment and taxation for the five preceding years, a large portion of the trust estate held by it; and further notified it that the assessor of the City of Lexington would proceed to assess as omitted property so much thereof as was subject to taxation, unless the property was listed by it for such purpose. The plaintiff in error did not respond to this demand and notice; but, with the full knowledge on its part of the purpose of the assessor, as aforesaid, failed and refused to list the alleged omitted property, or any part thereof, or to pay the taxes thereon.

After waiting about thirty days the City Assessor proceeded to make an assessment of the property omitted from assessment by the plaintiff in error, and entered the same on the books in his office, as shown by exhibits 1, 2 and 3 and pages 30 and 31 of the record. Tax bills were duly made out together with proper receipts, and placed in the hands of the Delinquent Tax Collector, who duly tendered to the plaintiff in error the receipts, and de-

manded payment of the taxes. Payment being refused, the Delinquent Tax Collector proceeded to levy upon the real estate held by the plaintiff in error. Thereupon the plaintiff in error brought this suit and secured a temporary injunction against the collection of the taxes. The petition contained four paragraphs. Demurrers were sustained to three, and overruled to paragraph 3. The defendants in error filed their answer and counter-claim. Upon the completion of the pleadings, two issues were presented. Upon these two issues proof was taken, the cause was submitted for hearing and judgment was rendered. By this judgment the Circuit Court reviewed the assessment made by the City Assessor. It corrected such errors in the assessment as was necessary; adjudged the exact property held by the plaintiff; what portion was taxable, and what not taxable, and gave judgment for the amount of the tax.

This judgment was reviewed by the Court of Appeals and confirmed.

The real question which the Supreme Court will consider is whether the plaintiff in error has been deprived of its property without due process of law, in contravention of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

I.

Under the decisions of this Court we do not deem it necessary to discuss whether the State Courts of Kentucky erred in overruling plaintiff's demurrers, or

whether the courts of Kentucky erred in holding that the burden of proof was upon the plaintiff in error and not upon the defendants. Mr. Justice Gray, in Central Land Co. vs. Laidley, 159 U. S. 103, concisely states the proposition as follows:

> "When the parties have been fully heard in the "regular course of judicial proceedings, an erroneous "decision of a State Court does not deprive the unsuc- "cessful party of property without due process of law "within the Fourtetenth Amendment of the Constitu- "tion of the United States,"

and citing in support of that proposition numerous decisions of this court to the same effect.

The decision of the Kentucky Court of Appeals was correct as will be fully shown by a careful examination of the decision itself.

The first material point to be considered in that decision was as to the burden of proof, and upon this question Judge Barker, of the Court of Appeals, in his decision in this case, says:

> "The first question with which we are confronted "is, upon whom was the burden of proof in this action? "Appellant urgently insists that it was incumbent "upon the city to allege and prove every essential fact "necessary to make out the validity of its tax-claim. "This position is untenable. It is true, the presump- "tion will be indulged as an original proposition, that "the regular assessmens for the years in question were "valid, and that the officers making them performed "their duty; but this presumption, when the officer

"under authority of law and his oath of office makes "a retrospective assessment, will be overcome and re- "placed by the new presumption that, in making the "retrospective assessment, he also did his duty. It "was as much the duty of those having the matter in "charge to make retrospective assessment of omitted "property, as to make the regular assessment; and the "same presumption of regularity and validity will "attend the latter official acts as attended the first. "The burden of proof, therefore, when one comes into "equity to enjoin the collection of a tax, which has been "officially ascertained to be due, is upon the plaintiff "to make out his whole case, and to do this he is re- "quired to allege and prove, if controverted, every "fact, whether it be negative or affirmative, necessary "to show the validity of the tax assailed." (See printed record, p. 112.)

The record in this case shows conclusively that the plaintiff in error refused and failed to give in a large amount of personal property upon which it should have paid taxes, and when brought to task by the city authorities in their effort to make it bear its proper proportion of taxes, has resorted to technical objections of all kinds to escape the payment of its just proportion of taxes.

Upon this point the Court of Appeals says:

"It was incumbent upon the appellant to make a "clear and full disclosure by items of all property sub- "ject to taxation it held in trust for Clara D. Bell, and "it in no wise discharged its duty to the city by im- "posing upon the officer an aggregate valuation, with- "out the items of which it consisted, and without being "sworn to as by law required. The officer, too, neglect-

"ed his duty in accepting illegal return; but his laches "cannot avail the appellant." (P. 113 of record.)

That it failed in its duty as above stated in the decision of the Court of Appeals, is shown by these facts. In the answer and counter claim of the defendants in error the following allegations appear:

"The total value of personality held by plaintiff "subject to taxation by the City of Lexington for 1894 "was not less than $510,662.90." (Printed record, p.22)

"The value of the assessable property held by "plaintiff on date for assessment for the year 1895 "was not less than $511,905.50." (Printed record p. 22)

"The value of all the personal property held by "plaintiff subject to taxation by the City of Lexington "for the year 1896 was not less than $527,634.65." (Printed record p. 23.)

"The total value of personalty subject to assess- "ment for the year 1897, and held by plaintiff, was not "less than $539,624.98." (Printed record, p. 23.)

"The value of the taxable personalty belonging to "said estate as of date of assessment for 1898 was not "less than $498,181.54." (Printed record, p. 23.)

The above figures, as we have stated, are derived from the appraisement, receipt given for the trust estate by the plaintiff in error, and from its settlements made as required by law in the Fayette County Court from time to time, as found on pages 42 to 68 of the record, inclusive. It is only a matter of calculation to determine from this receipt and these settlements the exact property which was in the hands of the trustee at any particular time. There can be no question as to the amount and value of

this property being shown by the record; for the plaintiff in error, by it's evasive and insufficient denials, admits the truth of the above statements. As to the amount and value of the property the plaintiff, in error, in its reply, says:

> "Plaintiff denies that it had in its hands as Trus-
> "tee, or in its control *all* of the property alleged in
> "the answer, etc. * * * * * It denies that the
> "value of the assessable property, at the date for the
> "assessment of 1895 was worth as much as $511,905.50,
> "or that the value for 1896 was as much as $527,634.65,
> "or for 1897 was worth as much as $5537,624.98, or for
> "1898, as much as $498,181.54." (See record, pp. 39 and 40.)

Manifestly this attempted denial is no denial at all, but is really an admission of the number and amount of bonds, and the values, as alleged by the defendant. The Kentucky Code of Practice, Sec. 126, provides that:

> "Every material allegation of the pleadings must,
> "for the purposes of the action, be taken as true, un-
> "less *specifically* traversed."

and this is the general rule of practice throughout the United States. Pomeroy on Code Remedies, page 623.

It must, therefore, be apparent to the Court that the appellant has put itself in the position of an evader of taxes who seeks by a technicality to escape payment of taxes, and who, when caught, and the facts proven by its own receipts, appraisements and settlements of the estate, still fights to retain the money justly due the City of Lexington for taxes.

Upon this state of facts, appearing from the record, upon such an issue, the Court of Appeals of Kentucky reached its conclusion.

The Supreme Court of Indiana, in the case of Reynolds, Auditor, et al., v. Bowen, 36 N. E. Rep., 756, reviews a case almost identical as to facts with the case now under consideration; and the language of the decision puts so clearly the argument we would now present to this Court, that we ask the Court's pardon for quoting from that decision at length:

"From the very nature of the case it may well be "that the Auditor can give only a general description. "The property owner himself is the one who can give "a particular description of his own property. This, "the text of the law requires him to do, in the first "place, when he makes out his particular list and hands "it to the Assessor. * * * * The power to assess "is a summary power to secure uniform and just taxa- "tion, and protect the revenues of the State, "both as to unscrupulous and dishonest evasion of the "law, and also in the interest of honest taxpayers, it is "necessary that assessment statutes should be liber- "ally interpreted in aid of the taxing power. Where "title is sought through a tax title the statute is strictly "construed in favor of the owner, but not where the "owner is attempting to evade the payment of his just "taxes. It was never intended that proceedings before "the Auditor, such as those objected to in this case, "should be conducted with all the precision and formal- "ity of an action in Court * * * * * Appellee "comes into a court of equity and asks that equity be "done him. He should, therefore, first show that he

"has himself done equity. His objections made before "the Auditor and repeated on this appeal are (1) that "the notice was not sufficiently specific, (2) that for "each of the years named the decedent had subscribed "and sworn to a tax list made out in due form of law "and handed it to the assessor wherein the decedent "returned certain credits and money loaned, and the "valuation made by the decedent was approved by the "assessor, duly returned to the Auditor, submitted to "the County Board, again approved, and so placed "upon the duplicate. * * * * * * * * *

"In short, the defense is that the decedent made his "own assessment, swore to it, the assessing officer ac- "cepting the assessment so made, and now there is no "help for it. The appellee makes no pretence that the "assessment was fair or just, or that the decedent had "in fact given in all of his property for taxation. He "says, in effect, to the State: 'The thing is done, what "are you going to do about it?' * * *(It) can "hardly avail to justify a property owner who comes "into a court of equity admitting substantially that "he has not made an honest return of his property for "taxation and not denying that the assessment as cor- "rected by the Auditor is a just one. Might not the "State in such case meet the taxpayer on his own "ground and reply. 'The assessment is now corrected "and placed upon the duplicate. Have you any reason "to show why it is not a just assessment?' * * * * *

"There was no averment that the personal estate of "the plaintiff liable for taxation was less in value than "the corrected assessment, none that his own sworn "list was correct, nothing from which the conclusion "could be drawn that the increased assessment was not "entirely proper and correct; that it was only claimed "that the plaintiff was not notified of the increase, and

"that there was no proof before the Council. In a "word, that the plaintiff sought the extraodrinary pro- "cess of injunction from a court of equity to protect "him from paying a tax which, according to his own "showing, it does not appear but that he ought in jus- "tice and conscience to pay. There was no equity "whatever as the basis of his application."

The court then quotes Judge Frazier in the case of Jones v. Summer, 27 Ind. 510: "It would be "difficult to imagine a case more utterly barren of "equity. The property owner committed serious errors "in his lists, which, in conscience and as a good citizen, "he ought voluntarily to have corrected; but he did "not. They were corrected; and now he asks to be "secured an advantage as the fruit of his own blunder, "merely because the correction, though just, was "directed by the wrong authority, and without notice to "him.' The able and upright Judge who decided that "case continues: 'The decision of this Court hereto- "fore in restraining taxes has gone to the utmost ex- "tent of authority. If we should now take the step "required in this case to sustain the ruling below, we "would be without the support of either reason or "precedent; and the collection of public taxes would, "on the warrant thus given, be constantly arrested at "the instance of those who seek to escape their just "share of public burdens.'" (Reynolds, et al. vs. Bowen, 36 N. E. Rep. 756.)

A person who seeks the aid of a Court of Equity against the payment of a tax must come with not only clean but open hands, and if he owes any tax the court will compel him to pay it.

Clark vs. Louisville Water Works, 90 Ky. 524.

In this case the Court of Appeals of Kentucky says:

"The rule then is, when one comes into equity ask-
"ing for relief against taxation, it is incumbent upon
"him to show clearly that he had paid or is willing to
"pay all that he justly owes toward the public burden;
"he must make a full, fair and complete disclosure of
"the property he has subject to taxation; so that the
"court may judge as to whether or not he is unjustly
"taxed; he must come not only with clean hands, but
"with open hands." (See record, p. 116.)

Having shown the justice of the decision of the Court of Appeals, we submit that it was based upon facts showing due process of law. Due process of law means notice, and as opportunity to be heard in such manner as adapted to the exigencies of the case. This requirement of due process of law we say was complied with in this case in three respects (1) *by the public notice which was given in accordance with the Statute;* (2) *by actual notice before the omitted property was assessed;* (3) *by a full hearing given to the plaintiff in error in this suit as to the justice of such assessment.*

II.

NOTICE BY PUBLICATION REQUIRED BY STATUTE.

The City of Lexington, under the Constitution of Kentucky, is a city of the second class, and its charter is

a part of the general law of Kentucky contained in Kentucky Statutes. We file as a part of this brief marked Appendix A, section 3179. Section 3179 of Kentucky Statutes (see Appendix A) provides as follows:

"On or before the first day of September in each "year the assessor shall give public notice by adver- "tisement in the official newspaper of the city, and by "handbills posted through the city, that all persons "owning, or having in their possession, or under their "control, as agent, guardian, committee, executor, ad- "ministrator, curator, trustee, receiver, commissioner, "or otherwise, tangible or intangible property of the "15th day of September following, are required, " on or before the first day of October, to give him "a true and complete list of the same with "true cash value thereof, as of the fifteenth "day of September, under oath, upon forms "to be furnished on application by said assessor at his "office * * * * * * The assessor shall keep "his office open, and be himself, or have a deputy, in "attendance during the hours from 8 a. m. to 6 p. m., "or such other additional hours as may by ordinance "be fixed from the fifteenth day of September to and "including the first day of October, except Sundays "and legal holidays. * * * The assessor shall "assess personal property in a separate book, in which "he shall separate tangible from intangible property. "The word person as used herein shall mean natural "and artificial persons, and the duties enjoined on "them shall, in the case of artificial persons, be per- "formed by the chief officer, or agent, in the city at the "time. Whenever the assessor shall ascertain that there "has, in any former year or years, been any property

"omitted which should have been taxed, he shall assess "the same against the person who should have been "assessed with it, if living, if not, against his repre- "sentative."

The statute contains the whole system of taxation, both as to yearly taxes and omitted property, when discovered, and is part of one act of assessment.

There can be no question but that this statute provides a notice which fully meets with the rulings of this Honorable Court, and that the statute and system itself is not in contravention of the Fourteenth Amendment of the Constitution of the United States.

The assignment of errors filed by plaintiff in error does not contain one expression which would possibly put in issue the question as to whether the legislature had failed by this Statute to provide for proper notice or proper hearing.

It has been repeatedly decided by this Court that publication of notice, as is provided in the statute cited, is ample and sufficient to meet the requirements of due process of law, and that the sittings of the officer at stated times and places takes taxation out of the inhibition of the Fourteenth Amendment.

Davidson vs. New Orleans, 96 U. S., 97.
Hager vs. Reclamation District, 111 U. S. 701.
Kentucky Railroad Tax Cases, 115 U. S., 321.
Cooley on Taxation, 3d edition, vol. 1, p. 61.

It is conceded that the City Assessor of Lexington for each of said years properly advertised his call for

assessments, both in the official newspaper of the City of Lexington and by hand bills, and it is likewise conceded that he sat at the time in the place fixed by law for receiving assessments, and that the plaintiff in error, pursuant to notice, did list certain property for taxation, omitting, however, a large portion of the property held by it. It filed a statement which we contend was its hearing and its side of the case. Subsequently, it was discovered that such statements were false, and that the plaintiff in error had not given in all of its property. Had it given a true and correct report of the property in its possession, as required by law, under oath, the city would have received each year the revenue to which it was entitled.

That when it submitted these statements it had its hearing, is supported by Justice Matthews' language in Kentucky Railroad Cases, 115 U. S., p. 321, where he said:

> "This return made by the corporation through its "officers is the statement of its own case in all the "particulars that enter into the question of the value "of its taxable property."

The plaintiff had its hearing. It had failed in its duty as required by the notice. The city had the right, under its charter, to assess the property omitted. As to the method necessary in such a case, Mr. Cooley says:

> "Since assessments for taxation do not constitute "judicial judgments such as can be set aside only upon "notice and before opportunity to be heard, a reassess-

"ment of grossly undervalued property so as to make "such property bear the same burden it would have "borne if the true assessment had been made in the "first instance, does not violate the constitutional re- "quirement of due process of law." (Cooley on Taxation, 3d edition, Vol. 1, p. 65.)

This principal is strongly stated and supported by the case of Weyerhauerer vs. Minnesota, 176 U. S. 550. If this be the law, as laid down in the above cited case and by Mr. Cooley, then the city had the right to assess this omitted property, even under the published notice, as required by the Statute.

There can be no question, therefore, that the system provided by the Statutes of Kentucky for taxation in the City of Lexington is strictly in accordance with the requirements of the Constitution of the United States, and that the tax assessments and levies made under this Statutes cannot be charged with contravening the Fourteenth Amendment thereof.

III.

THE ACTUAL NOTICE GIVEN TO PLAINTIFF IN ERROR MEETS EVERY REQUIREMENT OF DUE PROCESS OF LAW.

This Court has been called upon in a great number of cases to decide whether proceedings to collect taxes were contrary to the Fourteenth Amendment; and the plaintiff in error has cited a number of these decisions in support of its contention for a written notice of a hearing to be

had at a certain time and in a given place. But none of these decisions bears out that contention. In fact, every one of them decides that the especial state of facts then under examination meets the requirements of due process of law.

From this is is perfectly apparent that the Court is reluctant to interfere with the states and municipalities in the collection of their taxes.

Mr. Justice Bradley, in the case of Davidson vs. New Orleans, 96 U. S. 97, defines the Court's position in the following succinct language:

> "I think, therefore, we are entitled under the "Fourteenth Amendment not only to see that there is "some process of law, but due process of law, provided "by the state law when a citizen is deprived of his "property; and that, in judging what is due process "of law, respect must be had to the cause and object "of the taking, whether under the taxing power, "the power of eminent domain, or the power of assess- "ment for local improvement, or none of these, and if "found to be suitable or admissible in the special case "case it will be adjudged to be due process of law; but, "if found to be arbitrary, oppressive, and unjust, it "may be declared to be not due process of law."

Mr. Justice Brewer, in the case of Paulson vs. The City of Portland, 149 U. S. 30, says:

> "We do not think it essential to the validity of a "section in the charter of a city granting power to "construct sewers that there should in terms be ex- "pressed either a necessity for or the time or manner

"of notice. The city is a miniature state, the council "is its legislature, the charter is its constitution, and it "is enough, if in that the power is granted in general "terms, for, when granted, it must necessarily be exer- "cised subject to all the limitations imposed by con- "stitutional provisions, and the power to prescribe a "mode of its exercise is, except as restricted, subject "to the legislative discretion of the council. Thus in "the case of Gilmour vs. Hentig, 33 Kans. 156, it was "held that where a statute authorizes a city to provide "for the construction of sewers and drains, and to tax "the excess thereof upon the adjacent property own- "ers, but does not require that any notice shall be "given to the property owners: Held: that such "failure to require notice does not render the statute "unconstitutional or void, but notice must nevertheless "be given, and the city would have a broad discretion "with reference to the kind of notice and the manner "of giving same. * * * * As the form of notice "and the time of its publication are not affirmatively "disclosed in the complaint, it must be assumed that "there was no defect in respect to these matters. The "precise objection is that although proper and suffici- "ent notice may have been givn, it was not in terms "prescribed by the ordinance appointing the viewers. "But, as held by the Supreme Court in the case re- "ferred to (Maynard vs. Douglas County, 9 Ore. 206), "that which is implied in a statute is as much a part of "it as that which is expressed; and, where a statute or "an ordinance provides for stated meetings of boards, "designates the place at which the meetings are to be "held and directs that all persons interested in the "matter may be heard before it, it is, as said by Judge "Strahan, not a strained interpretation, but that it is

"implied thereby that some suitable notice shall be "given to the parties interested."

Mr. Justice Field, in the case of Hager vs. Reclamation District, 111 U. S. 701, said:

"Undoubtedly where life and liberty are involved, "due process requires that there be a regular course of "judicial proceeding, which imply that the party to be "affected shall have notice and an opportunity to be "heard. So also where title or possession of property "is involved; but where the taking of property is in "the enforcement of a tax,the proceeding is necessarily " less formal, and whether notice to him is at all neces- "sary may depend upon th character of the tax and the "manner in which its amount is determined. The neces- "sity for revenue for the support of the government "does not admit of the delay attendant upon the pro- "ceedings in a court of justice, and they are not re- "quired for the enforcement of taxes or assessments. "* * * * The law in prescribing the time such "complaints will be heard gives all the notice required, "and the proceeding by which the valuation is deter- "mined, though it may be followed—if the tax be not "paid-- by a sale of the delinquent property, is due pro- "cess of law."

To the same effect is Kentucky Railroad Cases, 115 U. S., 321.

Mr. Justice Woods in the case of Sturgis vs. Carter, 114 U. S. 511, says:

"The plaintiff in error contends that, besides "service of the subpeona requiring him to attend upon "the auditor and give tstimony in relation to property

"not returned for taxation, he was entitled to written "notice before the auditor could make an entry on the "tax list of any additional proprty omitted in his re- "turns. The statute does not require any notice in "writing except the compusory process of subpoena to "be served upon the person called to attend and testify. "But, if further notice was required, it was waived by "plaintiff in error. The finding of the circuit court "shows that he appeared and submitted to an examina- "tion touching the correctness of his returns, that the "auditor told him during such examination that as "auditor he was required by his duty to make a sup- "plemental assessment against him of property which "he had not included in his return for the four years "mentioned in the findings of the court, and requested "him to make such explanation of his returns as he "thought proper, and that he did make such as he "chose. It does not appear that he complained that he "had not received notice of the purpose of the auditor "to increase the assessment of his property, or that "it was too short, or that he asked further time for "considration or to take the advice of counsel, or to "produce further evidence. From all that appears by "the record there was no surprise. He had opportun- "ity to establish the correctness of the tax return, and "to show the auditor that he was not liable to an addi- "tional assessment. He cannot therefore complain of "want of notice. * * * * In substance this con- "tention is that a taxpayer who has been avoiding the "payment of the taxes due from him by making false "returns can shield himself behind the annual settle- "ments made by the auditor with the treasurer in "which his returns were assumed to be true, and that "the legislature can pass no act by which the falsity of

"of the returns can after a later period, in this case "four years, be exposed and the payment of the taxes "enforced. In other words, that the taxpayer has a "vested right as the fruits of his false returns. Such "a proposition cannot be sustained. Foster vs. Essex "Bank, 16 Mass. 245. In our opinion no right of the "taxing power was involved by the act of 1878. In- "vestments in bonds and stocks were subject to taxa- "tion. The tax upon such investmnts were due to the "state, and the act of 1878 merely provided a method "by which the taxes might be assessed and collected "in spite of the annual settlements made by the audi- "tor. It gave a new remedy to the state for enforcing " a right which it had all the time possessed, the right "to the taxes upon property liable to taxation."

We therefore assert that, under the decisions of this Court, only such notice as suits the circumstances of the case is necessary, and that no formal or prescribed notice is necessary.

ACTUAL, SPECIFIC NOTICE WAS GIVEN TO THE PLAINTIFF, and that fact has not been successfully denied or put in issue by plaintiff. The allegation of the answer filed by the City of Lexington upon this subject are as follows:

"These defendants allege that long prior to said "assessment, to-wit: more than thirty days prior to "said assessment, the defendant, the City of Lexington, "through its duly authorized officers and agents, noti- "fied the plaintiff that it had omitted from its assess- "ment for the years 1894 to 1898, inclusive, a large "portion of the estate held by it as trustee for Clara "Bell, and that said city, through its duly authorized

"officers and agents, furnished and delivered as a part "of said notice an itemized statement of the securities "and other personal property belonging to said estate "and held by the plaintiff on the respective dates for "taxation for the respective years, together with the "values of said property, and the amount thereof omit- "ted by plaintiff from its regular yearly assessment "sheet; that the payment of the taxes upon said omit- "ted property was repeatedly demanded of the plain- "tiff by the City of Lexington, through its legally ap- "pointed officers and agents, during the period of more "than thirty days next prior to said assessment, and "that plaintiff was notified long prior to said assess- "ment that unless said taxes for said omitted property "were paid, and the said property listed by plaintiff, "*the* assessment thereof would be made by M. C. "Foushee, the regular assessor of Lexington; and that "ample time and opportunity was afforded plaintiff to "show whether said property had been omitted or not "from said yearly statements." (See printed record, pp. 27-28.)

To this allegation of notice plaintiff in error made this very evasive and ineffectual reply:

"They deny that M. C. Foushee, assessor of the "City of Lexington, either himself or by deputy, ever, "prior to said assessment, made any claim against the "plaintiff as trustee for any of the back taxes alleged "to be due from it. Certain persons claiming author- "ity therefor, but not said assessor, did about that "time claim that certain taxes were due to said City, "and did present to the plaintiff a statement of said "claim, but said statement was not the same but ma-

"terially different from the items included in the "alleged assessment." (See printed record, p. 41.)

There is no denial that authorized agents of the City, or that the City of Lexington gave said notice for more than thirty days; but the denial is a specious one that neither M. C. Foushee, the assessor himself, nor by deputy, gave said notice. It is not worth while to take up the Court's time with citation of authorities upon such pleading as this. It is intended to be evasive, and was not really intended as a denial of the allegations of defendants' answer which, in fact, could not be truthfully denied.

We beg the Court to note that the City of Lexington, and not M. C. Foushee, is the defendant in this action and that the City of Lexington, and not the assessor, is the party entitled to the tax.

The allegations in the answer of the city (pages 27 and 28 of the record) show these facts: (1) that prior to the assessment notice was given on behalf of the city to the plaintiff that it had omitted from assessment for the years 1894 to 1898, a large portion of the estate held by it as Trustee of Clara D. Bell; (2) that the written statement of this claim was presented to the plaintiff; (3) that payment of these taxes was repeatedly demanded of the plaintiff before assessment was made, and payment refused; (4) plaintiff was notified that unless it listed the property the assessments would be made by M. C. Foushee, the City Assessor. The only response to these facts by the plaintiff, as shown on page 41 of the record, in which it denies that the Assessor made such

claim, but admits that such a claim was made on behalf of the city, and a written statement of it furnished to the plaintiff, which was different from the items now asserted.

On page 4 of the record, plaintiff says:

"Certain persons claiming authority therefor did "about that time claim that certain taxes were due to "said city; and did present to the plaintiff a statement "of said claim."

On page 55 it says:

"Said pretended assessments were made without any "advice or information except such partisan informa- "tion as was furnished to said assessor by the Back "Tax Assessor of said city."

The ordinance of said city (record, page 9) requires the Back Tax Assessor to ascertain if property was omitted and report the same to the assessor; and that the assessor should then assess the same.

So that the plaintiff admits, that before the assessment, it was notified that it had omitted property for these years and owed taxes, that the written claim was presented to it, payment of the taxes demanded and refused, and that it was notified that the assessor would assess it unless the property was listed. In response to this demand and notice the plaintiff did nothing, but refused to list the property or pay the taxes.

After waiting about thirty days the city assessor under authority conferred by the City Charter, proceeded to assess this omitted property, and entered the same on his books, as shown by Exhibits 1, 2 and 3, pages 30

and 31 of the record. The tax bills were duly made out, together with proper receipts, and placed in the hands of the defendant Gross, the Delinquent Tax Collector. He tendered the receipts and demanded payment of the plaintiff. This was refused. He then levied upon the real estate and had it advertised for sale.

The Court of Appeals of Kentucky, in this case, rules upon the question of notice in the following language:

"The claim of want of proper notice of the retro-
"spective assessment has already been largely disposed
"of in what we said as to the burden of proof. It was
"necessary (assuming that notice was vital) for the
"appellant to allege and, if denied, prove a want of
"notice of the retrospective assessment by the officer.
"While this would involve the proving of a negative,
"which is contrary to the general rule, yet is necess-
"ary in cases such as this under discussion. As the law
"presumes that the officers having the matter in
"charge did their duty, if notice was necessary, it will
"be presumed to have been given. Greenleaf on Evi-
"dence, section 78; Brandt vs. Hyatt, 7 Bush 363;
"Brown vs. Young, 2 B. Mon. 26. * * * * While
"appellant in this case did not show that it had not
"received notice of the re-assessment, *we think the ap-*
"*pellees established that it did have notice, although it*
"*was not necessary for them to have done so. This*
"*record shows that appellant relied upon the technical*
"*defense that the regular assessment made by the*
"*officer could not be inquired into, nor any property of*
"*its cestui que trust re-assessed, and had no intention*
"*whatever of recognizing the right of the assessor to*

"*assess any of its property as omitted.*" Printed record, pp. 113-114.)

We therefore contend that, under every phase of the matter, plaintiff had these notices:

1. The notice published in the newspaper;
2. The notice by handbills posted in public places:
3. The sittings of the assessor;
4. The actual notice to appear and give in the property which the assessor afterwards assessed as omitted property, said notice specifying the kind and character of property omitted.

IV.

A HEARING OF THE TAXPAYER'S COMPLAINT BY A COURT OF COMPETENT JURIDISTION MEETS THE REQUIREMENTS OF DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT, WHETHER THERE BE ANY OTHER NOTICE OR NOT, AND WHETHER THE TAXPAYER MAY HAVE HAD ANY OTHER HEARING OR NOT.

This, we think, is a self-evident proposition, and we claim in the case now at bar plaintiff was heard as to each and every one of his complaints by the Fayette Circuit Court, and by the Court of Appeals of Kentucky, and that said hearing was complete, and in every way met the requirements of due process of law. Under the jurisprudence of Kentucky, there can be no question but

that a court of equity can enjoin the collection of taxes. In fact, the plaintiff has invoked the jurisdiction of these courts in this action. In the case of Baldwin vs. Shine, 84 Ky. 5502, the court says:

"In many of the states equity will not enjoin even "the collection of an illegal tax, and much less an as- "sessment, because the assessor is regarded as a "quasi-judicial officer. It is said that public policy, "which will not brook delay in the public business, "requires this rule. It seems to us that the evils flow- "ing from its enforcement overbalance this considera- "tion. It is an object of equity to foresee and prevent "wrong. One of its principal offices is to avoid multi- "plicity of suits and circuity of action. By this rule "the taxpayer is left to sue the collecting officer. This "is unjust to both. It produces extensive litigation "between two innocent parties, one of them being in- "volved in it by reason of an honest effort in an official "duty. The courts of Illionis, Indiana, Pennsylvania, "and some other of the states, including this one, have "discarded this rule, and hold that a court of equity "may enjoin the collection of an illegal tax. This being "so, why is it not equally proper, in view of the aims "of equity, to extend the rule to a proposed illegal as- "sessment, official in its character as this one would be? "It is illegal to say that the chancellor can control "the consequences but not the act productive of them, "that he cannot arrest the act; but may lay his hands "upon those who attempt to carry it into necessary "result."'

In the case of Gates vs. Barrett, etc., 79 Ky. 295, the court says:

"The right to have injunction to restrain the col-
"lection of an illegal tax has been so long recognized
"and acted upon in this state that it is unnecessary to
"stop to inquire upon what grounds that jurisdiction
"is exercised by courts of equity."

To the same effect: Allison, etc., vs. Louisville, Harrods Creek and West port Ry. Co., 9 Bush 249; Louisville & Nashville R. R. Co. vs. Warren County Court 5 Bush 243

The most recent case in Kentucky upon this point is City of Louisville vs. Board of Trade, 90 Ky. 409. The court in rendering its opinion uses the following language:

"But a party seeking relief by injunction must make
"out a clear case of equitable interposition. The burden
"is upon him. Here the petition shows that at least a
"portion of the property was liable for taxes, and it
"shows that something is due. This being so, it was
"the duty of the party asking relief to definitely point
"out the extent to which he was entitled to be relieved.
"If he seeks equity he must do equity. He must show
"his willingness to pay what he is fact owes, or at
"least, in a case like this, he must show to the court
"how much he in fact does not owe. *He must, in as*
"much as injunction is peculiarly an equitable remedy,
"separate the just from the unjust portion of the claim
"and ask relief only as to the latter."

From these decisions it is apparent that in Kentucky a court of equity has the power in an injunction suit to restrain the collection or assessment of taxes, to correct the assessment, and give judgment to the party

entitled thereto for the exact amount of taxes justly due. This Court in a number of cases has clearly recognized the right to review tax questions by injunction.

The Kentucky cases cited by plaintiff in error in which the courts refuse to interfere, when boards of equalization have fixed values, has nothing to do with this case, first because the justice and reasons for the rule are apparent, and second because in the case at bar a full hearing, as to the amount of omitted property and its value was granted by the Kentucky Courts; and that meets all the requirements of due process of law.

Mr. Justice Field in the case of Stanley vs. Board of Supervisors, 121 U. S. 535, disposes of this question as follows:

> "When the overvaluation of property has arisen "from the adoption of a rule of appraisement which "conflicts with a constitutional or statutory direction "and operates unequally, not merely on a single in- "dividual but on a large class of individuals or corpo- "rations, a party aggrieved may resort to a court of "equity to restrain the exaction of the excess upon "payment on tender of what is admitted to be due. * "* * * The plaintiff below did not think proper to "resort to this method of obtaining relief, which would "have given him all he was entitled to, if, in fact, his "shares were assessed at the greater rate "than was assessed on other moneyed capi- "tal, because of their illegal over-valuation. "* * * * * * * If the assignors of the plain- "tiff had any just grounds of complaint to the assess- "ment as excessive, they should have pursued the "course provided by statute for its correction, or re-

"sorted to equity to enjoin the collection of the illegal "excess upon payment or tender of the amount due "upon what they said to be a just valuation. It follows "that the judgment of the court below must be affirmed "and it is so ordered."'

In the Kentucky Railroad Case, 115 U. S. 321, Mr. Justice Matthews says:

"The judgments now under review were rendered "in just such actions, so that we cannot escape the "conclusion that there is no ground for the plaintiffs "in error to contend that they had been rendered with- "out due process of law."

The judgments to which the learned justice referred were injunction suits brought by three railroad companies against the Commonwealth of Kentucky to enjoin the collection of taxes, in which the rights of the parties were reviewed, and the tax upheld.

Mr. Justice Miller, in the case of McMillan vs. Anderson, 95 U. S. 37, makes this statement:

"Nor is the person charged with such a tax with- "out legal remedy by the laws of Louisiana. It is "probable that in that state, as in others, if compelled "to pay the taxes by a levy upon his property, he can "sue the proper party and recover the money as paid "under duress, if the tax was illegal. But, however "that may be, it is quite certain that he can, if he is "wrongfully taxed, stay the proceeding for its collec- "tion by process of injunction. The act of 1874 recog- "nizes this right to an injunction and regulates the "proceedings when issued to stay the collection of "taxes. It declares that they shall be treated by the

"courts as preferred cases, and imposes a double tax "upon a dissolution of the injunction. But it is said "that this is not due course of law, because the judge "granting the injunction is required to take security "from the applicant, and that no remedial process can "be within the meaning of the Constitution which re- "quires such a bond as a condition precedent to its "issue. It can hardly be necessary to answer an argu- "ment which excludes from the definition of due pro- "cess of law all that numerous class of remedies in "which, by the rules of the court or by legislative pro- "vision, a party invoking the powers of a court of jus- "tice is required to give that security which is neces- "sary to prevent its process from being used to work "gross injustice to another."

In the case of Hager vs. Reclamation District, 111 U. S. 701, Mr. Justice Field, after reciting the provisions of the California law, requiring the collection of taxes levied by suit, concludes with this statement:

"In them he may set forth by way of defense all "his grievances. If property taken upon an assess- "ment, which can only be enforced in this way, be not "taken by due process of law, then, as said by Mr. Jus- "tice Miller in the New Orleans case, these words as "used in the Constitution can have no definite mean- "ing. The numerous decisions cited by counsel, some "of which are given in the note, as to the necessity of "notice and of an opportunity of being heard *are all "satisfied when a hearing in court is thus allowed.*"

Even if there had been no notice provided by statute, nor actual notice given, we affirm that in this action the appellant has had such a complete hearing of all of its

defenses that the inhibitions of the Fourteenth Amendment could not be invoked.

If we strip the contention of plaintiff in error of all of its technicalities, and get down to its real complaint, it is that it did not have proper notice, and did not have an opportunity to be heard as to the amount and value of its property subject to taxation. Plaintiff's petition (see printed record, pp. 1-8, inclusive) presents all these questions. It contends in its petition that it had given in its property, and had omitted no property, but fails to specify even then a list of the property which it held subject to taxation; though it does specify in its reply certain of its property which it alleges was not subject to taxation under the law of Kentucky. On all of these points the City of Lexington joined issue by answer and counterclaim (see record, pp. 20-29), and in this pleading defendants in error set out the items of omitted property, the value of each item, and alleged that the property is subject to taxation. To this plaintiff in error filed a reply, (see printed record, pp. 39-41), in which it joined issue upon some of the allegations of the answer and counterclaim of defendants.

Every single issue that could have been tried out before the assessor, or before the Board of Equalization, has been actually and fully heard.

Suppose the assessor had required the plaintiff in error to appear at a precise time and place, and show cause against this assessment, and suppose it had so appeared? What answer could it have given? Certainly no more than it made in this suit. If upon hearing the assessor

had held the same property liable for taxes as the Circuit Court did, could the plaintiff in error have complained that there had not been due process of law? If the court actually did what the assessor might have done, how is the plaintiff in error injured?

For authority the Kentucky Court of Appeals says in the case of Clark vs. Louisville Water Co., 90 Ky. 524:

> "The appellee by this suit came into Court and "asked equitable relief by injunction, or the exercise "of an extraordinary remedy. Asking equity, it may "well be required first to do equity, and being in Court "and liable for the tax and the chancellor being in pos- "session of the case, while its property in use in its "business cannot be seized, it should have been re- "quired to pay the taxes into Court."

The Fayette Circuit Court took general jurisdiction of the matters involved, and, after hearing both sides, rendered a judgment enjoining the City of Lexington from collecting all of the taxes it claimed for omitted property, but rendered a judgment for a part of the property claimed to have been omitted; and the extent to which plaintiff obtained relief in this proceeding is shown by the following table:

The city assessor assessed as omitted property for the year

1894	$217,762
1895	211,104
1896	226,8334
1897	238,925
1898	214,582

(See Exhibit No. 4, printed record, p. 32.)

On this the Fayette Circuit Court granted judgment in favor of the city for these years as follows:

1894	$123,799
1895	116,176
1896	136,057
1897	134,996
1898	176,716

Thus on the first three years it reduced the assessment more than $90,000 per year: for 1897 it reduced the assessment $104,000, and for 1898 it reduced the assessment $38,000. (See printed record, p. 102). The court heard proof upon the amount and values of the property omitted, and upon the other issues raised by plaintiff. (See printed record, pp. 42-96, inclusive), and then rendered judgment against plaintiff in a fixed sum for taxes due, and further adjudged a lien upon certain real estate which the court ordered sold. This judgment was rendered in this injunction proceeding under the general equity jurisdiction in such proceedings in Kentucky. (See printed record, pp. 98-103, inclusive.) From that judgment plaintiff prayed an appeal to the Court of Appeals of Kentucky, which was granted. (See printed record, p. 103). There the case was tried over upon the record taken up from the circuit court, and the judgment of the circuit court affirmed. (For opinion of Court of Appeals of Kentucky see printed record, pp. 110-116, inclusive.) The opinion of the Court of Appeals of Kentucky, delivered by Judge Barker, disposed of each and every one of

the contentions of the appellant and plaintiff in the court below. We beg the Court to read with care this able opinion, and call the Court's attention especially to the following part thereof:

"The claim of appellant to escape a retrospective "assessment of the property of its cestui que trust in "this case is wholly technical. That it owes the tax it "seeks to evade is made apparent by an examination of "this record. Although it had in its hands the means of "instantly and most conclusively showing either that "the trust estate did not own the property with which "it was assessed, or that the values were too high, *it "introduced no evidence whatever on this subject.* "While it was not incumbent upon the appellees to in- "troduce any evidence, being authorized under the "principles herein enunciated to await the evidence of "appellant showing the invalidity of the assessment "complained of, yet they did introduce evidence which "we think clearly establishes that appellant justly "owes the amount of the tax which has been adjudged "against the estate of its cestui que trust.

"Equity does not favor mere technical defenses "to the collection of tax claims. Taxes are the very "life blood of the government; the duty of paying a "ratable share of this public burden is incumbent on "every property-holder. Whatever just part of this "common burden is shirked by him whose duty it is to "bear it, is necessarily cast as an additional burden "upon other shoulders; and, therefore, while under the "law one may sometimes be permitted to interpose "mere irregularities as a defense to the imposition of "taxes, when he asks the aid of the extraordinary "power of the chancellor, he should show, as a condi-

"tion precedent to receiving it, that he has a meritor-
"ious defense to the tax claim he assails. * The rule
"then is, when one comes into equity asking for relief
"against taxation, it is incumbent upon him to show
"clearly that he has paid or is willing to pay all that
"he justly owes toward the public burden; he must
"make a full, fair and complete disclosure of the
"property he has subject to taxation, so that the court
"may judge as to whether or not he is unjustly taxed;
"he must come, not only with clean, but with open
"hands.'" (See printed record, pp. 115-116.)

We respectfully submit that, for all these reasons, separately and collectively, the judgment of the Court of Appeals of Kentucky in this case should be affirmed.

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Stanley vs. Board of Supervisors, 121 U. S., 535
McMillan vs. Anderson, 95, U. S., 37.

APPENDIX A.

Revenue and Taxation.

Section 3179. *Assessor to give notice---oath---office hours---blanks---failure to give list---penalty---other duties.* On or before the first day of September in each year the assessor shall give public notice, by advertisment in the official newspaper of the city and by handbills posted through the city, that all persons owning or having in their possession or under their control as agent, guardian, committee, executor, administrator, curator, trustee, receiver, commissioner or otherwise, tangible or intangible personal property on the fifteenth day of September following, are required, on or before the first day of October, to give him a true and complete list of the same, with true cash value thereof, as of the fifteenth day of September, under oath, upon forms to be furnished on application by said assessor at his office, and that all merchants in the city, doing business for themselves or others, shall, in like manner, in addition thereto, state the highest amount in value of all goods, wares, merchandise owned or kept on hand for sale by said merchants during the three months next preceding such fifteenth day of September. The assessor and his deputies shall be authorized to administer oaths and affirmations, and may examine on oath any person touching his personal property, and the value thereof, and may examine merchants on oath as to the statements they are required to make. The assessor shall keep his

office open, and be himself or have a deputy in attendance during the hours from 8 a. m. to 6 p. m., or such other or additional hours as may by ordinance be fixed, from the fifteenth day of September to and including the first day of October, excepting Sundays and legal holidays. The assessor shall constantly keep on hand, and furnish to persons lawfully requiring the same, all necessary blanks and forms for the lists and statements required by this act. Nothing herein shall, however, prevent the assessor from assessing from the best information he can gather; and where an assessment has been made against a person who has had actual notice to appear and list his property or make statements thereof and fails to do so, the same shall not be decreased, but may be increased by the board of equalization. If any person refuse to attend when summoned, or to be sworn to answer, or to answer any question propounded to him by the assessor or his deputy, the assessor or deputy may, in writing, under oath, state the question, the refusal to answer it, and ask the police judge to issue a warrant against such person; and if the question appear to be a proper one, the said judge shall issue a warrant, and said person shall, on conviction of having refused to answer the question, it being found by the court to be a proper one, be fined ten dollars, and there compelled by process to answer the question and such proper questions as the assessor may propound to him. The assessor shall assess personal property in a separate book in which he shall separate tangible from intangible property. The word person as used herein shall mean natural and arti-

ficial persons, and the duties enjoined on them shall, in the case of artificial persons, be performed by the chief officer or agent in the city at the time. Whenever the assessor shall ascertain that there has, in any former year or years, been any property omitted which should have been taxed, he shall assess the same against the person who should have been assessed with it, if living, if not, against his representatives.